

FILED

NOV 18 2008

Board of Vocational Nursing
and Psychiatric Technicians

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7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC**
TECHNICIANS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2006-236

12 JOEL HERRERA VILLANUEVA
13 11936 Eberle Street
Cerritos, CA 90703

ACCUSATION

14 Vocational Nurse License No. VN 165776

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
21 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
22 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about January 14, 1994, the Bureau of Vocational Nursing and
24 Psychiatric Technicians (Bureau) issued Vocational Nurse License No. VN 165776 to Joel
25 Herrera Villanueva (Respondent). The Vocational Nurse License was in full force and effect at
26 all times relevant to the charges brought herein and will expire on October 31, 2009, unless
27 renewed.

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1 7. Section 490 of the Code provides, in pertinent part, that the Board may
2 suspend or revoke a license when it finds that the licensee has been convicted of a crime
3 substantially related to the qualifications, functions or duties of a licensed vocational nurse.

4 8. Section 2875 of the Business and Professions Code (Code) provides, in
5 pertinent part, that the Board may discipline the holder of a vocational nurse license for any
6 reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice
7 Act.

8 9. Section 2878 of the Code states:

9 "The Board may suspend or revoke a license issued under this chapter [the
10 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)) for any of the following:

11 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

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13 "(f) Conviction of a crime substantially related to the qualifications, functions,
14 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
15 conclusive evidence of the conviction."

16 10. Section 2878.5 of the Code states:

17 In addition to other acts constituting unprofessional conduct within the meaning
18 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
19 licensed under this chapter to do any of the following:

20 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
21 licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or
22 administer to another, any controlled substance as defined in Division 10 of the Health and
23 Safety Code, or any dangerous drug as defined in Section 4022.

24 "(c) Be convicted of a criminal offense involving possession of any narcotic or
25 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
26 described in subdivisions (a) and (b) of this section, in which event the record of the conviction
27 is conclusive evidence thereof."

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 2521, states:

3 "For the purposes of denial, suspension, or revocation of a license pursuant to
4 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
5 act shall be considered to be substantially related to the qualifications, functions or duties of a
6 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a
7 licensed vocational nurse to perform the functions authorized by his license in a manner
8 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
9 limited to those involving the following:

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11 "(c) Violating or attempting to violate, directly or indirectly, or assisting in or
12 abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division
13 2 of the Business and Professions Code."

14 12. Section 11032 of the Health and Safety Code provides, in pertinent part,
15 that the term "narcotics" means controlled substances classified in Schedule I or II as defined in
16 section 11054 or 11055 of that code.

17 **COST RECOVERY**

18 13. Section 125.3 of the Code provides, in pertinent part, that the Board may
19 request the administrative law judge to direct a licensee found to have committed a violation or
20 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
21 and enforcement of the case.

22 **CONTROLLED SUBSTANCES - DANGEROUS DRUG**

23 14. Methamphetamine is a Schedule II controlled substance as designated by
24 Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous
25 drug pursuant to Business and Professions Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Convictions of Substantially Related Crimes)**

3 15. Respondent is subject to disciplinary action under section 2878,
4 subdivision (f) and 490 of the Code, in conjunction with California Code of Regulation, title 16,
5 section 2521, in that Respondent was convicted of crimes substantially related to the
6 qualifications, functions or duties of a licensed vocational nurse, as follows:

7 a. On or about May 2, 2008, Respondent was convicted by the Court on a
8 plea of guilty for violating Health and Safety Code section 11150 (a) (under the influence of a
9 controlled substance), a misdemeanor, in the criminal proceeding entitled *The People of The*
10 *State of California v. Joel Herrera* (Superior Ct. Orange County, 2008, No. 08NM01506).
11 Respondent was placed on 5 years of probation and served 120 days in jail.

12 b. On or about May 16, 2007, Respondent was convicted by the Court on a
13 plea of guilty for violating one count of Health and Safety Code section 11377(a) (found in
14 possession of methamphetamine), a misdemeanor, in the criminal proceeding entitled *The People*
15 *of The State of California v. Joel Herrera Villanueva* (Super. Ct. Orange County, 2007,
16 No. 07WF0633). Imposition of sentence was suspended and Respondent was placed on 3 years
17 formal probation. Respondent was also ordered to complete a drug treatment program. The
18 circumstances surrounding the conviction are that on or about February 23, 2007, a Cypress
19 Police officer observed Respondent sleeping in his car parked in front of The Royal Inn. The
20 officer also observed a twisted piece of plastic containing a white crystalline substance on the
21 seat next to Respondent. Respondent admitted to using methamphetamine five days prior. The
22 white crystalline substance later tested positive for methamphetamine. Respondent was placed
23 under arrest.

24 c. On or about March 13, 2007, Respondent was convicted by the Court on a
25 plea of guilty for violating Penal Code section 12021(d)(1) (possess firearm while on
26 probation), a misdemeanor, in the criminal proceeding entitled *The People of The State of*
27 *California v. Joel Herrera Villanueva* (Super. Ct. Los Angeles County, 2007, No. VA099848).
28 Respondent was placed on 3 years of probation.

1 d. On or about November 14, 2006, Respondent was convicted by the Court
2 on a plea of *nolo contendere* for violating Health and Safety Code section 11377(a) (found in
3 possession of methamphetamine), a misdemeanor, in the criminal proceeding entitled *The People*
4 *of The State of California v. Joel Herrera Villanueva* (Super. Ct. Los Angeles County, 2007, No.
5 6BF04011). Imposition of sentence was suspended and Respondent was placed on 3 years
6 formal probation and granted Proposition 36.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Convictions Involving the Possession of a Controlled Substance)**

9 16. Respondent is subject to disciplinary action under section 2878,
10 subdivision (a) of the Code, on the grounds of unprofessional conduct, as defined in 2878.5,
11 subdivision (c), in that on or about November 14, 2006, May 16, 2007, and May 2, 2008,
12 Respondent was convicted of crimes involving the possession of a controlled substance.
13 Complainant refers to, and by this reference incorporates, the allegation set forth in paragraph
14 15, subparagraph (a) through (d), inclusive, as though set forth fully.

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1 PRAYER

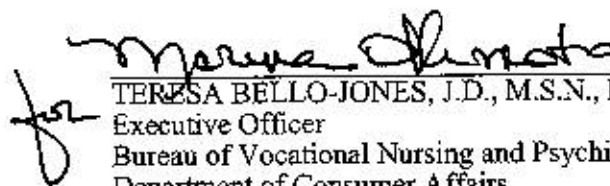
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

4 1. Revoking or suspending Vocational Nurse License Number VN 165776,
5 issued to Respondent;

6 2. Ordering Respondent to pay the Bureau the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Business and Professions Code section
8 125.3, and

9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: November 18, 2008

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14 TERESA BELLO-JONES, J.D., M.S.N., R.N.
15 Executive Officer
16 Bureau of Vocational Nursing and Psychiatric Technicians
17 Department of Consumer Affairs
18 State of California
19 Complainant
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